IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.901 OF 2003
IN
SUMMARY SUIT NO.1338 OF 2003

Tata Motors Limited ... Plaintiff

versus

M/s.S.P.Motors & others ... Defendants

Mr.Nitin Thakkar, Sr.Counsel i/by Mulla & Mulla for plaintiff.

Mr.Menon i/by Mahesh Menon & Co. for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th August 2005

PC :

1. Heard Mr.Thakkar - learned Senior Counsel appearing for plaintiffs and Mr.Menon appearing for defendants. The plaintiffs have filed present suit to recover a sum of Rs.2,35,89,922.49 Ps. as per particulars of claim (Exhibit-L). The principal amount is Rs.1,90,22,176.20 Ps..

2. Mr.Thakkar submits that the plaintiffs who were formerly known as Tata Engineering and Locomotive Company Limited are engaged in the

business of manufacturing and selling motor vehicles. It is true that the business of plaintiffs includes manufacture and sale of spare items.

3. He submits that first defendant is a partnership firm of which defendants 2 and 4 are partners. They are liable to the plaintiffs as partners as also guarantors.

4. Mr.Thakkar does not dispute that the first defendant was appointed as a dealer for some districts in the State of Karnataka. The dealership with the first defendant dates back to about 25 years. There are several dealership agreements and one of which is annexed as Exhibit-A. It is dated 2nd January 2001. He submits that the terms and conditions between the plaintiffs and first defendant involve sale of vehicles on principal to principal basis. The products including vehicles are in turn sold by the defendants to the customers and thereafter they are liable to pay to them for the vehicles/products so sold and delivered.

5. Although a reference is made to the guarantee in para 4 of the plaint, Mr.Thakkar submits that

the reference to obligations under this agreement as well as guarantee is to demonstrate the above relationship. He submits that under 40 invoices the plaintiffs drew 40 bills of exchange. The bills of exchange was for the value of the invoices. He relies upon the details of invoices. He submits that the payees under the bills of exchange were State Bank of India and HSBC Bank respectively. He submits that 40 bills of exchange were unconditionally accepted by first defendant. He submits that on acceptance of these bills of exchange they were delivered to the payees (the bankers) as above, who gave necessary consideration thereof to the plaintiffs. Relying upon the position of defendants as Acceptors of the bills of exchange under Negotiable Instruments Act, 1881, Mr.Thakkar submits that on the date of presentation, the Acceptors were bound and liable to honour the bills of exchange and make payment thereunder to the plaintiffs. However, on respective due dates, the said bills were dishonoured. It is pertinent to note that the bills of exchange have been indorsed by the plaintiffs in favour of respective bankers and he relies upon the endorsements on the bills of exchange in question. Mr.Thakkar submits that

notice of dishonour was waived by defendants. He submits that the bills of exchange with their due dates, amounts as also the quantum of interest @ 18% p.a. thereon are reflected in a statement which is annexed as Exhibit-L. He submits that due credit has been given for the sum of Rs.30.00 lakh which has been appropriated/adjusted pursuant to encashment of bank guarantee. The adjustments/appropriation is towards principal amounts under these bills. He submits that now there is due and payable a sum of Rs.1,90,22,176-20 Ps. as principal with interest.

6. He submits that the claim is maintainable under Order XXXVII of CPC as the suit is based on a Negotiable Instrument. The rate of interest is at the statutory rate @ 18% p.a.. Mr.Thakkar submits that a demand notice after the dishonour was issued and there has been no reply thereto.

7. Mr.Thakkar places strong reliance upon the fact that a meeting was arranged between the plaintiff and defendants which was attended by the father of a partner of defendant. He relies upon the minutes which were drawn. He submits that as per the minutes, the liability is clearly

accepted. In fact post dated cheques were handed over but despite the agreement and acknowledgement of the debt in writing, nothing is paid and therefore, now the plaintiffs are entitled to a decree in their favour.

8. Mr.Menon appearing for defendants states that there are several triable issues. For the present, he does not press issue of jurisdiction of this Court to take cognizance of the present suit and/or entertain and try the same. Mr.Menon submits that the suit is not maintainable as a summary suit. In his submission, the suit is based on a running account inasmuch as amounts due and payable under the dealership agreement, as reflected in the statement of account in the books of plaintiffs, are being claimed. He submits that a false contention is raised that the suit is filed on the bills of exchange, but in fact, it is filed on the basis of certain invoices which are 40 in number and picked up at random. The relationship dates back to several years and Mr.Menon invites my attention to the dealership agreement and the deed of guarantee. He submits that payment has been made as reflected in the statement of account annexed to the affidavit in reply and it is not permissible

for the plaintiffs to file a suit to recover amounts under the dealership agreement. He submits that this is a triable issue and the very nature of the claim being disputed, unconditional leave be granted to the defendants.

9. His next submission is that the meeting minutes of which are relied upon, is not attended on behalf of the first defendant firm. The partner has not attended. He submits that the said meeting has been attended by father of defendant no.3 and he is not party to the suit. He submits that the plaintiffs cannot be allowed to rely upon a document which is not signed by any of the defendants. Assuming without admitting that such meeting was held and some minutes were drawn, a reading thereof does not indicate that the liability is acknowledged or admitted, leave alone any understanding was arrived at to hand over post dated cheques. As the minutes having not been signed by the defendants, no reliance can be placed on the same. Mr.Menon contends that excess payments have been made by the defendants. He submits that the entire version of the plaintiffs is false and erroneous. He submits that over a long period of dealership agreement several vehicles

have been dumped on the defendants by the plaintiffs and the same were thereafter not sold in the market. Plaintiffs have to account for the losses that have been suffered by the defendants on account of poor market conditions. He relies upon the annexures to the affidavit in reply to contend that there is counter claim of the defendants which needs to be gone into. For all these reasons, he submits that unconditional leave be granted.

10. In my view, after hearing learned counsel and perusing the papers, it is clear that the present summary suit is based upon 40 bills of exchange under which plaintiffs have admittedly the rights as claimed in the plaint. It is not the case of the defendants that the bills of exchange have not been executed or accepted. It is not the case of the defendants that there is no obligation to honour the same. On the other hand, by maintaining complete silence through out and even after receipt of advocate’s notice, the defendants have admitted their liability insofar as bills of exchange. I need not for the present go into other issues inasmuch as the suit does not cover any claims under the dealership agreement or the deed of guarantee. It may be

that transactions evidenced by invoices have taken place and therefore, amounts are demanded by raising them. However, once 40 bills are subject matter of present suit and the liability arises on account of execution thereof, then it is not open for the defendants to raise other issues arising out of dealership agreement.

11. My attention is invited by Mr.Thakkar to the affidavit in reply and to the affidavit in rejoinder to deny that the defendants are falsely claiming credit for the amounts which are payable under the bills of exchange. There is absolutely no truth in their contention that payments have been made by the plaintiffs to the concerned bankers. None of the payments relate to the bills of exchange forming subject matter of the suit.

12. There is much substance in the contention of Mr.Thakkar that defendants have sought to mislead this Court by contending that no credit was given for payment under the suit bills of exchange. In fact, there is no truth in the contention that the payments have been made to the bankers. If that was the case, nothing prevented the defendants from writing to the plaintiffs in

response at least to the advocate's notice which is duly received, that payments have been so made. In the affidavit in rejoinder it is pointed out that the amounts under the bills of exchange are outstanding. All other accounts including the spare part account are independent claims and in fact plaintiffs have filed separate proceedings to claim amounts thereunder. If there was any truth in the contention that the amount of Rs.55.00 lakh has been over paid, as urged by Mr.Menon, then some steps would have been taken by the defendants to claim them. Mr.Menon could not point out anything on record to show that the amounts under the bills of exchange have been paid, leave alone in excess.

13. There is no substance in the contention that the suit is based on a running account inasmuch as after going through the plaint averments it is clear to me that it is based on the Negotiable Instruments. The liability thereunder having not been denied, in my view, substantial defence is not raised to the claim of plaintiffs.

14. At the same time, principles that have to be applied while considering an application seeking leave to defend any summary suit, involve one

aspect of showing mercy to a defendant by giving an opportunity to make good even a plausible defence. However, while showing such mercy it is not as if the plaintiff must suffer. The Court is empowered to balance the claims and impose conditions when granting such opportunity. This principle is recognised by several decisions of Hon'ble Supreme Court. In my view, interest of justice would be served if an opportunity is granted to the defendant to substantiate the defence insofar as their claims arising out of dealership agreements and losses incurred thereunder. However, that would be on the condition that the defendants deposit in this Court the principal sum of Rs.1,90,22,176,20 Ps. within a period of 16 weeks from today. Accordingly following order.

15. ORDER :- On defendants depositing a sum of Rs.1,90,22,176.20 Ps. within a period of 16 weeks from today in this Court, leave to defend is granted. Needless to state that if the amount is not deposited, further consequences in law would follow. It would then be open for the plaintiffs then to apply for a decree against defendants. In the event amount is deposited, then it will be open for the plaintiffs to apply

for withdrawal of the sum and such application would be considered on its own merits and in accordance with law. Summons for Judgement disposed off as above.

(S.C.DHARMADHIKARI, J.)